

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DAVID WILLIAM TURPEN,

CASE NO. C22-0496-JCC

11 Plaintiff,

ORDER

12 v.

13 KATHERINE ARQUETTE TUPREN, *et al.*,

14 Defendants.

15 This matter comes before the Court on Plaintiff's motion to compel (Dkt. No. 21), motion
16 to amend the case scheduling order (Dkt. No. 22), and request for attorney fees (Dkt. No. 27), as
17 well as the Hon. Lisa Vanderford-Anderson, Michelle Lechich, and Jerry Ford's (collectively
18 "Defendants") motion to quash and for a protective order (Dkt. No. 38), along with their requests
19 to strike (Dkt. Nos. 36, 37). Having thoroughly considered the briefing and the relevant record,
20 and finding oral argument unnecessary, the Court DENIES the motions to compel and for
21 attorney fees (Dkt. Nos. 21, 27), GRANTS in part and DENIES in part the motion to amend the
22 case scheduling order (Dkt. No. 22), GRANTS the motion to quash and for a protective order
23 (Dkt. No. 38), and DENIES the requests to strike (Dkt. Nos. 36, 37) for the reasons explained
24 herein.

25 Plaintiff asks this Court to, amongst other things, vacate a Muckleshoot Tribal Court
26 order dissolving his marriage. (*See generally* Dkt. No. 1.) The Court described Plaintiff's

1 specific allegations as contained in his complaint in a prior order and will not repeat them here.
 2 (See Dkt. No. 19.) After Plaintiff served the complaint, and upon the Court's instruction, the
 3 parties submitted a Rule 26(f) status report. (See Dkt. No. 15.) In response, the Court set a
 4 January 3, 2023 discovery cut-off date. (Dkt. No. 16.) Shortly after this date lapsed, Plaintiff
 5 moved to compel Defendants' response to, what at the time, were outstanding discovery
 6 requests. (Dkt. No. 21.) He later asked for attorney fees in filing his motion. (Dkt. No. 27.)
 7 Separately, but for the same reasons, Plaintiff also moved to amend the case management
 8 schedule,¹ including to extend the discovery cut-off. (Dkt. No. 22).

9 Plaintiff's motion to compel asks the Court to order Defendants to respond to requests for
 10 admission, requests for production, and interrogatories. (*See generally* Dkt. No. 21 at 1.) But
 11 since Plaintiff filed this motion, Defendants did, in fact, provide the responses sought. (See Dkt.
 12 No. 33 at 4–35 (responses with objections noted).) Therefore, Plaintiff's motion to compel (Dkt.
 13 No. 21) is DENIED as moot. The Court also DENIES Plaintiff's request for attorney fees in
 14 filing this motion. This is because, only in reply does he even make this request. (*See* Dkt. No.
 15 31). And at no point does he adequately explain *why*. (*Id.*)

16 In belatedly responding to Plaintiff's discovery requests, Defendants lodged numerous
 17 objections, based primarily on relevancy. (See Dkt. No. 33 at 4–35.) They contended that the
 18 only issue raised by Plaintiff's complaint, and therefore relevant for purposes of discovery, is
 19 whether the Muckleshoot Tribal Court lacked jurisdiction over Plaintiff's marriage dissolution.
 20 (*See generally id.*; *see also* Dkt. No. 38 at 8–11 (Defendants' argument to the Court on the
 21 relevancy issue).) As such, according to Defendants, very little, if any, fact discovery was and is
 22 necessary in this matter. (*Id.*) This is because the legally relevant facts regarding Plaintiff's
 23 marriage and the Muckleshoot Indian Tribe's housing subsidy, which Plaintiff and his former
 24 spouse received, including the terms thereof, are undisputed. (*Id.*) On this basis, Defendants

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 26 ¹ The parties stipulated to this extension on the record. (Dkt. No. 20). Plaintiff later withdrew it
 for unknown reasons. (Dkt. No. 25.)

1 moved to quash Plaintiff's outstanding subpoenas. (*See generally id.*) Defendants also moved for
 2 a protective order barring further discovery. (*Id.*)

3 Plaintiff contends that his complaint "plainly state[s]" a bad faith claim, which would
 4 necessitate further discovery. (Dkt. No. 39 at 3–4.) He gets there through the following pained
 5 logic: because his complaint asks for attorney fees, which could be recoverable upon a bad faith
 6 finding, the complaint necessarily states a bad faith claim. (*Id.* (citing *Dave Johnson Ins., Inc. v.*
 7 *Wright*, 275 P.3d 339, 354 (Wash. Ct. App. 2012).) But this logic does not hold up. Moreover, it
 8 is belied by the complaint. Nowhere does Plaintiff explain *why* he is entitled to attorney fees—
 9 only that he seeks this relief. (*See generally* Dkt. No. 1.) Rule 8 requires more. Plaintiff, like any
 10 complainant, must provide a "short and plain statement of the claim showing that [he] is entitled
 11 to relief." Fed. R. Civ. P. 8 (emphasis added). This is nowhere to be found. (*See generally* Dkt.
 12 No. 1.) For this reason, Defendants' motion to quash and for a protective order (Dkt. No. 38) is
 13 GRANTED.

14 As mentioned above, Plaintiff also seeks to amend the case management order, along
 15 with attorney fees. (*See* Dkt. Nos. 22, 37). But Defendants' production adequately responds to
 16 the factual issues at issue in this case, based on the operative complaint. As such, no extension of
 17 the discovery cut-off is necessary (absent an amended complaint). That being said, the Court
 18 believes that this matter may benefit from mediation and dispositive motions. For this reason,
 19 Plaintiff's motion to amend the case management order (Dkt. No. 22) is GRANTED in part and
 20 DENIED in part. But Plaintiff's request for attorney fees in so moving (Dkt. No. 37) is DENIED
 21 for the same reasons as above—it is procedurally deficient and lacks supporting facts and
 22 argument.

23 Finally, Defendants ask the Court to strike both of Plaintiff's reply briefs. (Dkt. Nos. 31,
 24 32.) They assert that the briefs impermissibly introduce argument on the issue of whether
 25 Plaintiff's request for attorney fees, as contained in his complaint, is sufficient to state a bad-faith
 26 claim (and open Defendants up to fact discovery). (Dkt. Nos. 36, 37.) The Court agrees with

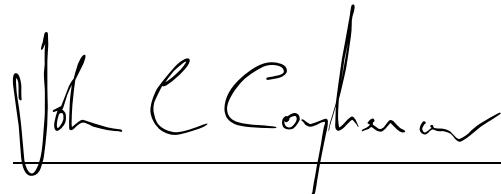
1 Defendants. A reply brief is not the place to make new argument or add allegations to a
2 complaint. *See, e.g., Amazon.com LLC v. Lay*, 758 F. Supp. 2d 1154, 1171 (W.D. Wash. 2010).
3 And for this reason, the portion of Plaintiff's briefs (Dkt. Nos. 31, 32) addressing the import of
4 his request for attorney fees is improper. But rather than strike the offending text, the Court has
5 disregarded here, in the interest of expediency. *See AT & T Mobility LLC v. Holaday-Parks-*
6 *Fabricators, Inc.*, 2011 WL 5825714, slip op. at 2 (W.D. Wash. 2011). As such, this moots
7 Defendants' requests to strike (Dkt. Nos. 36, 37).

8 Based on above, it is hereby ORDERED as follows:

- 9 1. No further discovery on the instant complaint (Dkt. No. 1) is permissible;
- 10 2. Should Plaintiff wish to amend his complaint, which could allow for additional
11 discovery, Plaintiff must seek leave to do so in accordance with LCR 15 no later than
12 March 17, 2023; and
- 13 3. Absent leave to amend, the case management schedule is modified as follows:
 - 14 a. Mediation deadline: April 14, 2023
 - 15 b. Dispositive motion deadline: April 28, 2023
 - 16 c. Pretrial order due: July 31, 2023
 - 17 d. Trial date: August 7, 2023.

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19 DATED this 6th day of March 2023.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE